

Title:	Lautenberg Amendment to Federal Gun Control Act	
Purpose:	To ensure that the City & County of Honolulu is in compliance with the September 30, 1996 amendment known as the Lautenberg Amendment to the Federal Gun Control Act of 1968 (FGCA).	
Issued by:	Employment and Personnel Services	Date: February 15, 2005
References:	Lautenberg Amendment to the Federal Gun Control Act of 1968 (FGCA), Title 18, Section 922(q)(9) (9-30-1996); Circular No. 2-00 (12-11-00)	

I. POLICY

The Lautenberg Amendment prohibits the City and County of Honolulu (City) from allowing any person(s) convicted of a misdemeanor or felony crime of domestic violence to have access to carry, and/or possess a firearm and ammunition as part of their duties.

All City employees who have access to, or, are required to carry and/or possess firearms and ammunition are covered by this policy. Also included are employees who have access to, or, are assigned to possess a firearm or ammunition on a temporary, intermittent or emergency basis. (Exception: All Honolulu Police Department employees who have access to, or, are required to carry and/or possess firearms and ammunition are included under this policy, however are excluded from the self-reporting/annual screening procedure. Refer to General Orders, and other departmental policies.)

II. DEFINITIONS

“Applicant” means a person who applies for employment in a particular class and/or position covered under the amended law. This includes all types of employment such as civil service appointments, exempt from civil service, re-employment, non-competitive movement, placement as a result of a reduction-in-force, etc.

“Conviction of Crime” means that an applicant/employee is convicted of a crime under the FGCA when the following conditions are met:

- 1) entered a guilty or no contest plea to the charge, or
- 2) was convicted by a jury in a jury trial, or knowingly waived his/her right to a jury trial, and
- 3) was either represented by legal counsel, or knowingly waived his/her right to legal counsel.

Note: A person MEETS qualification requirements if the conviction has been expunged, set aside, pardoned, or the person has had his/her civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) AND the person is not otherwise prohibited from possessing firearms or ammunition.

Deferred acceptance of nolo contendere (DANC) and deferred acceptance of guilty (DAG) pleas are NOT considered convictions under Hawaii law.

“Employee” means any person providing service to the City whether paid or non-paid.

“Employer” means the City and County of Honolulu.

“Employing Department” means a department or agency of the City.

“Felony Crime of Domestic Violence” means an offense that:

- 1) is a felony under Federal or State law; and
- 2) has as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is co-habiting or has co-habited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

“Misdemeanor Crime of Domestic Violence” means an offense that:

- 1) is a misdemeanor under Federal or State law; and
- 2) has as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is co-habiting or has co-habited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

NOTE: Misdemeanors include all offenses that involved the use or attempted use of physical force if the offense was committed against a person(s) with a relationship to the perpetrator as described in the law. This is true whether or not the State statute specifically defines the offense as a domestic violence misdemeanor; consequently, court or other records may need to be accessed to determine if the victim is in a relationship covered by law.

“Position” means a specific job, whether occupied or vacant, consisting of all current duties and responsibilities assigned or delegated by competent authority, requiring the full or part time employment of one person.

“Termination of services” means complete severance of an employee from the service of the City, not including resignation or discharge.

III. FORMS

“Certification of Qualification Form “ (Attachment A) – A question and answer form completed by an applicant/employee for law enforcement or related class or position, which requires the applicant/employee to self report all criminal convictions, including military criminal convictions of domestic violence.

“Criminal History Record Clearance” (Attachment B) – A form completed/signed by the applicant/employee authorizing the Department of Human Resources (DHR) to conduct

a criminal history record check. In addition, the form includes information of any records found from the various reporting agencies.

IV. GENERAL REQUIREMENTS:

- A. All employing departments must identify and maintain a list of all positions that require or may require employees to have access to, carry and/or possess a firearm and ammunition (hereafter referred to as "Lautenberg positions").
- B. Applicants for Lautenberg positions shall be notified that they must be screened for convictions of a domestic violence crime prior to selection and/or assignment of duties.
- C. All employees in Lautenberg positions shall be notified by the employing department that they must be screened annually for convictions of a domestic violence crime.
- D. All employees in Lautenberg positions shall be notified by the employing department of the requirement to self-report any misdemeanor or felony conviction of a domestic violence crime within one week of conviction to the appointing authority or designee of the department. Once disqualified, employees must immediately surrender their City issued firearm and ammunition as applicable. Failure to self-report is a violation of the provisions of the FGCA. Any individual who knowingly violates the provisions of this law is subject to a fine of \$250,000, Federal imprisonment of up to 10 years, or both.
- E. Criminal history checks will be conducted by the DHR. Checks for convictions of a domestic violence crime shall include verification of the records of the Hawaii Criminal Justice Data Center (HCJDC), the Federal Bureau of Investigation (FBI) and/or National Crime Information Center (NCIC), and military courts, as appropriate.
- F. Upon discovery that an employee has a misdemeanor or felony conviction of a domestic violence crime, the appointing authority or designee must immediately remove all City issued firearms and ammunition from the employee, cease assignment of duties requiring the employee to access, carry and/or possess a firearm and ammunition, notify the employee of the disqualifying conviction, and initiate action to remove the employee from the Lautenberg position.
- G. For those employees identified as disqualified by the Lautenberg amendment, the employing department shall terminate the employee for failing to meet minimum qualification requirements (MQRs) for the Lautenberg position.
- H. The employee will not be entitled to any placement rights.
- I. The employee may seek other employment through the normal recruitment channels, or the employee may request placement in a non-Lautenberg position provided the employee meets MQRs. The employing department's decision as to the placement of the employee shall be final.

V. RESPONSIBILITIES

A. Employing Department

1. Identify all positions and/or classes that require or may require employees or applicants to have access to carry and/or possess a firearm and ammunition.
2. Amend applicable position descriptions (Form DHR-C&P-55e) as follows and submit to DHR's Classification and Pay (C&P) Division:

- a) Under Special Work Requirements, add the following statement:

Must be qualified to possess, carry and/or have access to firearms and ammunition in accordance with applicable state and federal laws.

- b) Under Equipment or Tools regularly operated or used, list the equipment.

For example, 9mm hand gun, ammunition.

- c) Under the description of duties and responsibilities, describe the duties.

For example, keeps firearms safe key in a secure location; or, carries and uses a rifle and ammunition in the course of assisting in animal escapes or emergencies; or, in the absence of the Clerk, issues ammunition to authorized employees.

3. Identify all employees occupying Lautenberg positions, including those employees who are on or eligible for temporary assignment to such positions.
4. Require employees or applicants (for exempt appointments) identified in (A) above to complete and return the Certification of Qualification Form (CQ Form, Attachment A) and the Criminal History Record Clearance Form (CHRC Form, Attachment B).

Submit completed CQ and CHRC forms to DHR, Examination Branch to obtain criminal history record check from appropriate agencies (noted in General Requirements E).

5. If the criminal history records check indicates that the employee or applicant (for exempt appointments) has a misdemeanor or felony conviction for a domestic violence crime, take appropriate actions (noted in General Requirements F & G. See sample letter, Attachment C.)
6. In the event of an intra/inter movement (promotion, transfer, or voluntary demotion) from a non-Lautenberg position to a Lautenberg position, the employing department will be responsible for obtaining the CQ and CHRC Forms from the incoming employee and obtaining the appropriate criminal history records. If an employee has a disqualifying conviction, the employing department must deem the person ineligible for movement for not meeting the MQRs for the Lautenberg position and/or class of work and so notify the employee and, if applicable, the other department.

If an employee is moving from one Lautenberg position to another Lautenberg position, the employing department must ensure that the employee being transferred is qualified for the position.

7. For selectees from an eligible list, have selectee complete CHRC form (L1). Instruct selectee to contact Hawaii Criminal Justice Data Center (HCJDC) to obtain FBI fingerprint check. Upon receipt of report from DHR, proceed with employment action.
8. Annual Review:
 - a) Annually survey all employees in Lautenberg positions, including employees who are eligible for temporary assignment to Lautenberg positions using Attachments A and B.
 - b) Submit completed Attachments A and B to DHR by June 30th to obtain updated criminal history records from appropriate agencies.
9. Maintenance of Records. Maintain all CQ forms, criminal history records, and annual surveys in a confidential file, separate from employee's personnel files. Retain these records for a minimum of three (3) years after employee's separation.

B. Department of Human Resources (DHR) Employment & Personnel Services Division

1. Advertise the MQRs (i.e., no misdemeanor or felony conviction of a domestic violence crime) in all job announcements for Lautenberg positions and/or classes of work.
2. Screen applications for MQRs and reject applicants ineligible due to a misdemeanor or felony conviction of a domestic violence crime.
3. Obtain criminal history records checks from appropriate agencies.
4. For selectees from an eligible list, send report of findings and evaluation to appointing department for processing of employment action.
5. Conduct suitability investigations, as necessary, in cases of falsification of information in the application form and/or CQ Form.
6. Ensure that all departments and agencies are in full compliance with the amended law and its current and future requirements.
7. Develop and maintain a centralized database of disqualified applicants.
8. Retain all application materials pertaining to the CQ forms and any criminal history records as part of the application reject file and/or confidential suitability file as appropriate. Retain applicant records for a minimum of two years after the date of last action taken on the application.